

## **RULES OF THE LAND COURT**

Effective July 1, 2005

*Note: These Rules supersede and replace all prior Land Court Rules in their entirety.*

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#### **Rule 1. Applicability of Rules**

The following rules apply to all cases pending on the effective date of these rules, unless ordered by the court in a particular case.

#### **Rule 2. Fees and Deposits**

Parties to any action, at such times and in such amounts as are ordered by the court or required by statute, shall pay or deposit those sums into court for application to the fees and expenses payable under applicable statutes or by order of the court.

In addition, a plaintiff who files a complaint for registration or confirmation shall make a deposit for the assurance fund required under G. L. 185, §99, to be applied to that fund.

Deposits paid into court shall be held in the custody of the recorder who, if practicable, shall return any surplus which remains at the conclusion of the case to the party who paid the surplus. Otherwise, the surplus shall be delivered to the state treasurer.

#### **Rule 3. Exhibits**

Unless a longer time is required under Mass. R. A. P. 9(c), exhibits offered as evidence and chinks shall be retained by the recorder for three years after the trial or hearing at which they were used, subject to an order of confiscation or destruction, unless sooner delivered to the parties or counsel by whom they were presented or introduced. Unless

otherwise ordered, jointly submitted exhibits will be considered to belong to the plaintiff.

If in doubt as to the party or counsel entitled to delivery, the recorder may require an agreement of parties or counsel or an order of the court before delivery. After the expiration of three years from such trial or hearing, the recorder may destroy or discard such exhibits after giving thirty days' notice to the parties, if practicable.

**Rule 4. Motions Under Mass. R. Civ. P. 12(b)(1), 12(b)(6), 12(c) or 56.**

A party moving under Mass. R. Civ. P. 12(b)(1), 12(b)(6), 12(c) or 56, or opposing such a motion, shall file with the motion or opposition a brief containing: (1) a statement of the issue or issues presented, (2) a statement of the legal elements, with citations to supporting law, of each claim upon which judgment is sought or opposed, (3) an argument in summary form, and (4) a short conclusion stating precisely the relief or order sought; otherwise the court may decline to act on the motion or consider the opposition, as the case may be.

Each motion under Rules 12(b)(1) or 56 shall be accompanied by a concise statement, in consecutive numbered paragraphs, of the material facts upon which the moving party relies, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits. If the motion is brought under Rule 56, the material facts in the statement must be those as to which the moving party contends there is no genuine issue to be tried.

Each opposition to a motion under Rules 12(b)(1) or 56 shall include: (1) a response, using the same paragraph numbers, to the moving party's statement of facts, and (2) in consecutive numbered paragraphs, a concise statement of any additional material facts which the opposing party deems relevant and necessary to the motion. Any response other than "admitted" to a statement of fact made by the moving party, and any statement of additional material fact, must include page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits, or else the facts described by the moving party as undisputed shall be deemed to have been admitted.

The statements filed by the moving party and the opposing party shall each be accompanied by an appendix, appropriately indexed, composed of: (1) all cited portions of the documents or other materials referenced in those statements, and (2) copies of all legal and other authorities cited in the briefs with the exception of the Massachusetts General Laws and cases reported in the official Massachusetts Reports, the Massachusetts Appeals Court Reports, or the Land Court Reporter. The opposing party's appendix need not duplicate any materials contained in the moving party's appendix so long as the cross-referencing is clear. The court need not look in the record or take judicial notice beyond the materials brought to its attention by the parties.

A copy of the motion, brief and (in the case of Rule 12(b)(1) and 56 motions) the statement of material facts and the appendix containing copies of supporting materials, shall be served upon all other parties and filed with the court within the time limits set

forth in Land Court Standing Order No. 1-04, if applicable.<sup>1</sup> Cross-motions must follow the same procedures and timeframes as motions, and must likewise be served and filed in accordance with Standing Order 1-04, if applicable. Responses to motions or cross-motions, including any controverting statements and the materials supporting those statements (including any counter or Rule 56(e) affidavits), must be served upon all other parties and filed with the court within thirty (30) days after service of the motion or cross-motion. A hearing date shall be set by the court. Reply briefs, affidavits and other materials in support of the reply (if any) must be served on the parties and filed with the court no later than ten (10) days prior to the date the court first set for hearing; any rescheduling of the hearing date shall not change this deadline. Affidavits and other materials in support of the reply which, in the opinion of the court, are not responsive to the opposition or cross-motion, may be stricken. An opposing party's failure to file a cross-motion shall not preclude the court from granting dispositive relief to the opposing party if such relief is appropriate (see Rule 56(c)). Extensions or other modifications of the dates set forth above may be ordered by the court on its own motion for good reason and as the interests of justice require, or upon motion and for good cause shown.

The court need not act on any motion or cross-motion unless the parties have complied with the requirements of this rule and may deny any such motion or cross-motion which fails to comply.

#### **Rule 5. All Other Motions**

All motions not covered by Rule 4 must be filed with the court and marked by the moving party for hearing on at least seven (7) days' notice (the number of days to be calculated as provided in Mass. R. Civ. P. 6(a)) at such dates and times for the hearing of motions as shall be established and published by the court from time to time. It is the responsibility of the moving party to determine whether a motion must be heard by a particular judge and, if so, the motion must be marked for hearing before that judge at an appropriate date and time. The motion shall contain a statement of reasons, including supporting authorities, why the motion should be granted and a statement of the precise relief sought; otherwise the court may deny or decline to act on the motion. Unless the court, in its discretion, grants permission, all affidavits and other materials in support of the motion must be filed and served with the motion. Oppositions to such motions, and all materials in support of that opposition along with any cross-motions (including motions to strike), must be served and filed with the court so they are received by all other parties and by the court no later than noon one (1) business day prior to the date marked for the motion's hearing. Any papers not served and filed with the motion or opposition and in timely fashion may be filed only with leave of court.

#### **Rule 6. Matters Which May Not Require Oral Argument**

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<sup>1</sup> Standing Order No. 1-04 applies to certain cases filed on or after October 4, 2004.

The court in its discretion may decide matters on submitted papers without oral argument, but only after having received written statements of reasons in support and opposition from all interested parties, or having given those parties fair opportunity to submit written statements.

**Rule 7. Settlement of Discovery Disputes**

The parties shall confer in advance of filing any motion under Mass. R. Civ. P. 26 or 37 in a good faith effort to narrow areas of disagreement to the fullest possible extent. The party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference required by this rule was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate may be denied without prejudice to renewal when accompanied by the required certificate.

**Rule 8. Motions for Discovery Orders**

All motions arising out of a party's response (or non-response) to an interrogatory, request for admission, deposition question, or arising out of a party's response to, or asserted failure to comply with, a request for production of documents, shall be accompanied by a brief. With respect to each interrogatory, deposition question, or request at issue, the brief shall set forth separately and in the following order: (1) the text of the interrogatory, deposition question, or request, (2) the opponent's response, and (3) an argument. Alternatively, the text of the interrogatory, deposition question or request and the opponent's response may be contained in an appendix to the brief.

**Rule 9. Motions for Reconsideration**

Motions for reconsideration, and all briefs and affidavits or other supporting materials filed by the moving party in support thereof, shall be filed with the court and served on all parties. The words "MOTION FOR RECONSIDERATION" shall appear clearly in the title to the motion. Upon filing, the recorder shall transmit the motion and supporting papers to the judge who decided the original motion or matter. No response to the motion for reconsideration shall be required, and no hearing shall be marked or scheduled, unless the judge so requests, and the judge may deny the motion without the need of such a response or hearing. No motion to reconsider shall be granted without giving the opposing party an opportunity to respond.

**Rule 10. Agreements for Judgment**

A written agreement for judgment for a sum certain or that all relief shall be denied shall be accepted by the recorder for filing, and upon filing shall constitute the judgment of the court for all purposes as provided in Mass. R. Civ. P. 58(a). Any other agreement for judgment (including, without limitation, those for declaratory or injunctive relief, requiring the parties to enter into agreements or perform any acts, or ordering any official or board to take any action), whether or not accepted for filing by the recorder, shall not

constitute the judgment of the court unless and until the court, either on its own motion or on motion of one or more parties, endorses or otherwise approves the agreement for judgment. Motions for approval of agreements for judgment may be decided by the court without hearing, but the court may in its discretion order a hearing.

**Rule 11. Identification of Judge on Court Filings**

After a party receives written notice from the recorder that a case has been assigned to one of the judges of the court, or otherwise becomes aware of such a notice, all pleadings thereafter filed in that case shall include, prominently in the case caption immediately following or underneath the case number, the surname or initials of that judge.

**Rule 12. Forms**

The use of the court's forms in the case of complaints for registration, confirmation, tax foreclosure, or pursuant to the Servicemembers' Relief Act, is mandatory. The use of such other forms as the court may publish from time to time is not mandatory; however, those forms should be consulted, where appropriate, for guidance as to the content of alternative submissions.

**Rule 13. Rules Applicable to Partition Proceedings**

The Rules of Civil Procedure, and these Rules, shall apply to all partition proceedings.